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BRAZIL

LEGAL LETTER OCTOBER 1997

I. BRAZILIAN DENATIONALIZATION PROGRAM

On September 9, 1997, President Fernando Henrique Cardoso sanctioned Law 9491, setting forth the Brazilian denationalization program rules and repealing Law 8031 of April 12, 1990.

According to Law 9491/97, the main objective of the denationalization program are:

- (i) to review the strategic position of the state in the economy, transferring to the private sector those activities that are not germane to the role of the state;
- (ii) to contribute to the economic restructuring of the public sector;
- (iii) to foster investments in the privatized companies; and
- (iv) to strengthen the Brazilian stock market by increasing the number of listed companies.

The following companies may be subject to the denationalization program under Law 9491/97:

- (i) state-controlled companies, including financial institutions and companies authorized to operate by the Central Bank of Brazil;
- (ii) former private companies whose corporate control was assumed by the state;
- (iii) public services that are presently rendered under concession, authorization, or license; and
- (iv) state financial institutions under federal intervention.

The denationalization program may be carried out by sale of the state interest in privatizing companies; listing and trading of their shares on the stock exchange market; capital increases; sale of the assets of the wound-up companies; and the conces-

sion, authorization or licensing to render certain activities.

The denationalization program will be supervised by *Conselho Nacional de Desestatização* (Brazilian Denationalization Council, CND), which is the authority responsible for determining the eligible companies, as well as the adequate denationalization procedures. CND is composed of:

- (i) the Minister of Planning and the Budget (as President);
- (ii) the Minister for Civil Affairs;
- (iii) the Minister of Finance;
- (iv) the Minister of Administration and State Reform; and
- (v) the Minister of Industry, Trade, and Tourism.

Law 9491/97 allows the President of the Republic to establish the means of payment admissible on a case-by-case basis (DOU-I, September 10, 1997).

II. FOREIGN PARTICIPATION IN FINANCIAL INSTITUTIONS IN BRAZIL

On September 9, 1997, the Brazilian Monetary Council issued Communiqué 5796, stating that the increase of foreign participation in Brazilian financial institutions as well as the opening of new branches of foreign financial institutions authorized to operate in Brazil are subject to prior approval by the Brazilian government, upon the presentation of a formal inquiry to the Central Bank of Brazil, according to the provisions of Article 52 of the *Ato das Disposições Constitucionais Provisórias* (Temporary Constitutional Provisions Act, ADCT) of October 5, 1988.

Article 52 of the ADCT conditioned the increase of foreign participation in the capital of Brazilian financial institutions and the opening of new branches of foreign financial institutions in Brazil on:

- (i) the enactment of a supplementary law setting forth the conditions for such participation; or
- (ii) the existence of national public interest.

The supplementary law mentioned above has not yet been enacted by Congress, and consequently cases are being scrutinized and approved individually by the competent authorities. Accordingly, the interested parties should address a formal in-

quiry to the Central Bank of Brazil before taking any step towards formalization of related transactions (DOU-I, September 11, 1997).

III. EXPORT GUARANTEE FUND

On August 27, 1997, President Cardoso sanctioned Provisional Measure 1583, creating the *Fundo de Garantia à Exportação* (Export Guarantee Fund, FGE) to cover the guarantees offered by the federal government on export credit transactions under Federal Law 6074 of October 26, 1979, and Decree 2049 of October 31, 1996.

FGE was designed to guarantee the commercial and political risks involved in short- and long-term export credit transactions secured by the federal government, respectively, for up to eighty-five percent of the transaction value. FGE has an accounting nature, and its net worth will be basically composed of:

- (a) preferred shares issued by Banco do Brasil S.A.; and
- (b) preferred registered shares issued by *Empresa Brasileira de Telecomunicações* (TELEBRÁS).

FGE will be managed by the Brazilian Social and Economic Development Bank (BNDES), according to the regulations set forth by the Ministry of Finance, through the *Conselho Diretor do Fundo de Garantia à Exportação* (Directive Council of the Credit Guarantee Fund, CFGE) (DOU-I, August 28, 1997).

IV. PROTEST OF BILLS

On September 10, 1997, President Cardoso sanctioned Law 9492, regulating the procedures for protest of bills and other instruments of indebtedness, as well as the services related to the protest of such instruments by the Negotiable Instruments Protest Office.

A protest is a formal and solemn act whereby the creditor of a bill may prove default by the debtor.

Law 9492/97 sets forth the procedures to be observed by the Negotiable Instruments Protest Office and by the parties for filing and registration of protests, service of notice on debtors, and acceptance and payment of bills.

Law 9492/97 was enacted to simplify the protest of bills procedure (DOU-I, September 11, 1997).

V. BRAZILIAN TRAFFIC CODE

On September 23, 1997, President Cardoso sanctioned Law 9503, setting forth new traffic regulations applicable throughout Brazil.

The main objective of the new Brazilian Traffic Code was to reduce the number of highway and city accidents by setting forth a list of traffic crimes and their respective punishments, as well as by imposing heavier fines on drivers responsible for accidents involving victims.

The fines applicable to traffic violations may vary from approximately U.S.\$50.00 to U.S.\$180.00. According to Law 9503/97, recidivism may be punished by progressive escalation of the fine, as well as cancellation of the driver's license.

Law 9503/97 sets forth a list of traffic crimes punishable in the criminal sphere, such as:

(a) involuntary manslaughter, punishable with detention of two to four years and cancellation of the driver's license (penalties may be increased in the event the driver does not have a driver's license or fails to assist the victim, such as a hit and run);

(b) culpable bodily injury, punishable with detention from six months to two years and suspension or permanent cancellation of the driver's license; and

(c) driving under the effects of alcohol or other drugs, punishable with detention from six months to three years, a pecuniary fine, and suspension or cancellation of the driver's license.

The enactment of the new Traffic Code was an important measure to reduce the impunity of the drivers responsible for city and highway car accidents in Brazil.

LEGAL LETTER NOVEMBER 1997

I. BRAZILIAN ELECTRIC POWER AGENCY

On October 6, 1997, President Fernando Henrique Cardoso Enacted Decree 2335 providing for the *Agência Nacional de Energia Elétrica* (Brazilian Electric Power Agency, ANEEL) internal regulations (DOU-I, October 7, 1997).

ANEEL was created by Law 9427 on December 26, 1996, as an autonomous government entity subordinate to the Ministry of Mines and Energy.

According to Decree 2335/97, ANEEL is responsible for regulating and surveying the production, transmission, distribution, and marketing of electric power in Brazilian territory by, among others:

- (i) implementing policies and guidelines for the commercial development of electric power;
- (ii) stipulating competition among concessionaires and supervising all segments of the electric power sector;
- (iii) defining and supervising the price and tariff mechanisms;
- (iv) authorizing spin-offs and mergers of the concessionaires, and transfer of concessions; and
- (v) supervising the rendering of services and electric power facilities.

According to Decree 235/97, ANEEL will be managed in accordance with an agreement to be executed between the Minister of Mines and Energy and the ANEEL board.

ANEEL will be jointly managed by:

- (i) a board of directors responsible for determining ANEEL's strategic planning, for creation and execution of internal administration policies, as well as human resources and their development;
- (ii) the *Procuradoria Geral* (Government Attorney's Office), responsible for the judicial staff; and
- (iii) *Superintendência dos Procedimentos Organizacionais* (Organization Procedural Superintendency), responsible for es-

tablishing prices and tariffs, market relations, bidding processes and issuing the applicable regulations, among others.

II. IDENTITY CARDS FOR ALIENS

On October 15, 1997, President Cardoso sanctioned Law 9505, changing the rules for the census of aliens holding permanent visas in Brazil.

According to Law 9505/97, aliens with Brazilian permanent visas who participated of the last census and who: (i) are older than 60 years at the date of expiration of the *Registro Nacional de Estrangeiro* (Identity Card for Aliens, RNE); or (ii) are handicapped, are no longer required to renew their Identity Card for Aliens within the time frame of nine years established by Law 8988 of February 24, 1995 (DOU-I, October 16, 1997).

III. EXTRADITION TREATY

On October 10, 1997, President Cardoso enacted Decree 2347, sanctioning the extradition treaty agreed to between the Government of the Federal Republic of Brazil and the Government of the United Kingdom of Great Britain and Northern Ireland, signed in London on July 18, 1995. This treaty establishes the conditions for extradition of individuals between the signatory countries.

According to Article 2 of Decree 2347/97, individuals sentenced for crimes punishable in both countries with imprisonment fines of one year or more are subject to extradition, upon request of the other signatory country.

Political crimes, however, are not subject to extradition.

Individuals sentenced to death will not be extradited to countries where such penalty exists unless the government of the requesting country assures that such penalty will not be applied (DOU-I, October 8, 1997).

IV. IMPORT TRANSACTIONS

Central Bank of Brazil enacted Circular 2778 on October 15, 1997, extending to February 28, 1998 the date of termination of the benefits established by Central Bank Circular 2749 of April 3, 1997.

Circular 2749/97 excluded the need to conclude exchange contracts in import transactions when the following conditions are cumulatively fulfilled: (i) the value of the import transaction is inferior to R\$40.000,00; (ii) the exporter is from Mercosur, Chile or Bolivia, and is signatory to the *Sistema de Solução de Controvérsias* (Dispute Resolution System, ALDI); and (iii) the exchange transactions are closed on or before the last day of the second month following the month of registration of the import declaration, with due regard for the regulations for the Agreement for *Convênio de Pagamentos e Créditos Recíprocos* (Reciprocal Payments and Credits, ALADI) (DOU-I, October 16, 1997).

V. TELECOMMUNICATIONS SIGNALS VIA SATELLITES

The Minister of Communications issued Ordinance 495 on October 3, 1997, submitting for public consultation the invitation to bid for the concession of Satellite Data Telecommunications Services. According to the draft invitation to bid, concessions will be granted for the period of 15 years. The bid process will take place in the first semester of 1998 (DOU-I, October 6, 1997).

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